

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STEVEN C. McKNIGHT,

Plaintiff,

v.

9:16-CV-0957
(TJM/DEP)

J. FERRICK, C.O.; et al.,

Defendants.

APPEARANCES:

STEVEN C. McKNIGHT
13-B-0171
Plaintiff, pro se
Gouverneur Correctional Facility
P.O. Box 480
Gouverneur, NY 13642

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

I. INTRODUCTION

Plaintiff pro se Steven C. McKnight commenced this civil rights action asserting Eighth Amendment excessive force claims against four individual defendants arising from an incident which occurred on June 15, 2016 at Gouverneur Correctional Facility. Dkt. No. 1. Plaintiff did not pay the filing fee and sought leave to proceed with this action in forma pauperis. Dkt. No. 5.

Upon review of the complaint in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), this Court concluded that while plaintiff had alleged facts in his complaint which plausibly suggest that defendants used excessive force against him in violation of his

Eighth Amendment rights, the complaint was subject to dismissal on Eleventh Amendment grounds because plaintiff's claims for money damages were asserted against the individuals only in their "official" capacities. Dkt. No. 7 ("August Order") at 7-8. Plaintiff was granted leave to file an amended complaint. *Id.*¹

In response to the August Order, plaintiff submitted a one-page statement entitled "Amended Complaint Answer." Dkt. No. 8. Upon review, the Court concluded that this submission was not a complete pleading which cured the deficiency identified in the August Order. Dkt No. 9 ("September Order") at 3. However, because it clearly appeared that plaintiff intended to pursue this action, he was afforded a second and final opportunity to submit an amended complaint which clearly indicates that he is suing the four named defendants in their "individual" capacities (as DOCCS employees). *Id.* at 4.²

Plaintiff duly filed an amended complaint in response to the September Order. Dkt. No. 10.

II. DISCUSSION

As discussed in the August Order, "official capacity" suits against DOCCS employees are essentially actions against the state and, as a result, claims for money damages are barred by the Eleventh Amendment. August Order at 5-6. Thus, lawsuits brought pursuant to 42 U.S.C. § 1983 seeking money damages from individual DOCCS employees for misconduct in the course of their employment must be brought against them in their

¹ Plaintiff's in forma pauperis application was granted. August Order at 7.

² Plaintiff was advised that this deficiency could be cured by revising Section 3 (Parties to this Action) of his original complaint to indicate that defendants were sued in their "individual" capacities, signing and dating the revised pleading, and submitting it to the Clerk for filing as his amended complaint. August Order at 7 n.6; see *also* September Order at 3-4.

"individual" capacities. *Id.*

Upon review of plaintiff's amended complaint, the Court finds that plaintiff has submitted a complete pleading in which he seeks relief against the four named defendants in their "individual" capacities for the alleged use of excessive force against him on June 15, 2016. See Dkt. No. 10.³ As a result, plaintiff's amended complaint is accepted for filing and is the operative pleading in this action; the Clerk is directed to issue summonses for service of process.

III. CONCLUSION

WHEREFORE, it is hereby

ORDERED that plaintiff's amended complaint (Dkt. No. 10) is **ACCEPTED** for filing and is the operative pleading in this action; and it is further

ORDERED that upon receipt from plaintiff of the documents required for service of process, the Clerk shall issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service on defendants. The Clerk shall forward a copy of the summons and amended complaint to the Office of the New York Attorney General, together with a copy of this Decision and Order; and it is further

ORDERED that a response to the amended complaint shall be filed by defendants or their counsel as provided for in the Federal Rules of Civil Procedure; and it is further

ORDERED that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S.

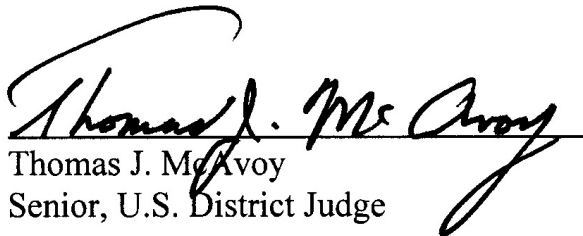
³ Plaintiff also submitted a two-page "Notice of Motion for Leave to Amend" which has been docketed as a submission in support of the amended complaint. See Dkt. No. 10-1.

Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with all requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so will result in the dismissal of this action**; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Dated: October 13 , 2016


Thomas J. McAvoy
Senior, U.S. District Judge